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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,539	04/09/2004	Joseph B. Hippensteel	047732/277336	1290
826	7590	03/08/2005		
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER NGUYEN, TAM M	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/821,539	HIPPENSTEEL, JOSEPH B.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tam Nguyen	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,7 and 10-19 is/are rejected.
- 7) ☒ Claim(s) 2,4,6,8 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4-9-04</u> .  | 6) <input type="checkbox"/> Other: ____                                     |

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**DETAILED ACTION*****Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 7 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 7 and 14, lines 1-2 and 2 respectively, the phrase "pivotable vertically" is unclear. The examiner suggests the following to clarify the subject matter: --pivotable about a vertical axis--.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 10-19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5, 8, 10, 11, 15 and 19 of U.S. Patent No. 6,674,432 (Hippensteel). Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims from the application are merely broader in some respects and add obvious features in other respects compared to the claims of Patent No. 6,674,432.
3. As to claim 10, Hippensteel discloses an exercise machine having all of the elements as claimed (see Claim 6). It is obvious to make each arm mechanism vertically adjustable from

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the frame to accommodate various users having different arm lengths so as to provide a comfortable exercise motion.

4. As to claim 11, Hippensteel discloses an exercise machine as described above (see discussion of Claim 10). Hippensteel further discloses a headrest mounted to the frame via a spring mechanism (see Claim 3). Hippensteel does not disclose that the spring mechanism runs in a direction along the length of the bench. It is obvious to make the spring mechanism run in a direction along the length of the bench since that is the shortest path between the bench and the headrest and the resulting spatial arrangement provides for the head rest to be disposed just beyond the bench to properly support the user's head and torso during exercise.

5. As to claim 12, Hippensteel discloses an exercise machine as described above (see discussion of Claim 10). Hippensteel further discloses that the arm exercise mechanism is laterally adjustable (see Claim 4). It is obvious to make each arm mechanism laterally adjustable to accommodate various users having different shoulder widths arm so as to provide a comfortable exercise motion.

6. As to claim 13, Hippensteel discloses an exercise machine as described above (see discussion of Claim 10). Hippensteel further discloses a bar removably attachable to the arm mechanisms to fix the arm mechanisms to rotate together (see Claim 8). It is obvious to add a removable bar to allow for the arm mechanisms to rotate independently or together so as to provide the user with multiple forms of exercise.

7. As to claim 14, Hippensteel discloses an exercise machine as described above (see discussion of Claim 10). Hippensteel further discloses that the arm exercise mechanism is pivotable about a vertical axis to rotate the arm mechanism's axis of rotation (see Claim 10). It is obvious to make each arm mechanism pivotally rotatable about a vertical axis so as to provide the user with arm exercises having different arm motions.

8. As to claims 15 and 16, Hippensteel discloses an exercise machine having all of the elements as claimed (see Claim 19). Hippensteel does not disclose that the spring mechanism

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runs in a direction along the length of the bench. It is obvious to make the spring mechanism run in a direction along the length of the bench since that is the shortest path between the bench and the headrest and the resulting spatial arrangement provides for the head rest to be disposed just beyond the bench to properly support the user's head and torso during exercise.

9. As to claim 17, Hippensteel discloses an exercise machine having all of the elements as claimed (see Claim 1). It is obvious to remove elements and their related functions where the ability of the remaining elements to perform the same functions as before involves only routine skill in the art.

10. As to claims 18 and 19, Hippensteel discloses an exercise machine as described above (see discussion of claim 17). Hippensteel does not disclose that the shock absorber-like device includes a spring or a shock absorber. The examiner takes Official Notice that the prior art includes exercise apparatuses having shock absorber-like devices that include a spring or shock absorber. It is obvious to provide a shock -absorber-like device with any of an array of shock absorbing components such as a spring or shock absorber.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Chang (6,001,046).

11. As to claims 1 and 5, Chang discloses an exercise machine comprising a bench (42) having a length and width mounted on a frame (24), a pair of independently adjustable arm exercise mechanisms mounted on a first end of the frame, the arm mechanisms include a rotatable arm (62) that is rotated around an axis of rotation (along pivot pin 68) about an adjustable tension device (70), each rotatable arm including a shaft portion (between brackets

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66) that is separate and distinct from the shaft portion of the other rotatable arm, each shaft portion defining said axis of rotation, and an adjustable leg exercise mechanism mounted on a second end of the frame, the leg mechanism includes a pair of rotatable pedals as substantially claimed (see Fig. 1).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chang (6,001,046).

12. As to claim 3, Chang discloses an exercise device as described above. Chang does not disclose that the arm mechanism is laterally adjustable to accommodate the width of the user's arms and shoulders. The Examiner takes Official Notice that the prior art includes exercise devices having width adjustable frame components. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make Chang's stabilizer bar (16) with telescoping components such that the bar can be extended for increased stability and to accommodate users with relatively wider shoulders and arms for improved user comfort. Adjustability, where desirable, is a modification that is within the skill of the art. In re Stevens, 212 F.2d 197, 101 USPQ 284 (CCPA 1954).

***Allowable Subject Matter***

13. Claims 2, 4, 6, 8 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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**Conclusion**

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Olschansky et al. '479 disclose an exercise device comprising a bench, separate arm exercise devices and a leg exercise device.

Gordon '865 discloses an exercise device having a bench and arm and leg exercise devices on opposite ends of the bench.

Kecala '967 and Mark '967 disclose exercise devices having adjustable benches.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F, 9-5.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 2, 2005

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GREGORY L. HUSON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700